

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

BID PROTEST

_____	)	
SPACE EXPLORATION	)	
TECHNOLOGIES CORP.,	)	
	)	
Plaintiff,	)	Case No. 19-742-C
	)	(Judge Lydia Kay Griggsby)
v.	)	
	)	
UNITED STATES,	)	
	)	
Defendant,	)	
	)	
and	)	
	)	
UNITED LAUNCH SERVICES, LLC; BLUE	)	
ORIGIN, LLC; and ORBITAL SCIENCES	)	
CORPORATION,	)	
	)	
Intervenor-Defendants.	)	
_____	)	

**UNITED LAUNCH SERVICES, LLC’S RESPONSE TO APPLICATIONS OF  
NORTHROP GRUMMAN CORPORATION’S IN-HOUSE COUNSEL FOR ACCESS TO  
INFORMATION UNDER PROTECTIVE ORDER**

Pursuant to the Protective Order entered by this Court on May 22, 2019, Intervenor-Defendant United Launch Services, LLC (“ULS”) files this response to the Applications for Access to Information Under Protective Order by Outside or Inside Counsel filed on behalf of Maureen F. Del Duca and Kenneth M. Reiss (together, “Applicants”) on May 28 and 29, 2019 (ECF No. 40 (Reiss PO Application); ECF No. 41 (Del Duca PO Application)). Applicants represent that they are in-house counsel for Northrop Grumman Corporation, the corporate parent of Intervenor-Defendant Orbital Sciences Corporation. (ECF No. 40 at 1; ECF No. 41 at 1.) ULS does not object to the admission of Applicants to the Protective Order, but respectfully requests that the Court impose additional, clarifying protections to further ensure that no competitively-

sensitive information in this proceeding would be used to gain a competitive advantage in the ongoing Phase 2 of the National Security Space Launch program competition, Solicitation Number FA8811-19-R-0002 (the “Phase 2” competition).

The present protest involves a challenge to the Air Force’s October 10, 2018 decision to award Intervenor-Defendants ULS, Orbital Sciences Corporation, and Blue Origin, LLC, funds under three Launch Services Agreements (“LSAs”) executed pursuant to the Air Force’s Other Transaction Authority, 10 U.S.C. § 2371b. Under the recently-issued schedule in this protest, the Court directed the Air Force to file by June 11, 2019 the Administrative Record underlying its LSA decision. The Administrative Record will contain extremely sensitive and competitively significant materials and information concerning the technical capabilities, state of development, and other competitively-sensitive information about the launch vehicles of all the parties to this proceeding, as well as the United States Air Force’s evaluation of those capabilities. Yet, the Air Force filing of the Administrative Record will occur at the very same time that the parties are preparing proposals in the Phase 2 Competition, pursuant to a Request for Proposals posted on May 3, 2019 (with proposals due August 1, 2019). Because the parties are anticipated to propose the launch vehicles at issue in this protest to perform services in the Phase 2 Competition, the improper use of competitively-sensitive information from this proceeding would provide a party an unfair and improper competitive advantage in the Phase 2 Competition.

The inclusion of in-house counsel under the Protective Order warrants additional protections above and beyond those set out in the current Protective Order. Although ULS recognizes that the Protective Order entered by the Court on May 22 provides that “[p]rotected information may be used solely for the purposes of this litigation and may not be given, shown, made available, discussed, or otherwise conveyed in any form except as provided herein . . .” (ECF

No. 16 at 2), ULS respectfully requests that the Court expand the protections of its Protective Order to specifically provide that protected information may not be “used” within the meaning of the Protective Order “for any purpose other than this litigation, including, but not limited to, the ongoing competition for Phase 2 of the National Security Space Launch, Solicitation Number FA8811-19-R-0002, and any bid protest arising in connection with that procurement.” This request is consistent within this Court’s well-recognized authority to modify a protective order to meet the specific circumstances of the proceeding.

Dated: May 31, 2019

Respectfully submitted,

/s/ Todd R. Steggerda

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 31, 2019, pursuant to RCFC 5, 5.3, and Appendix E, paragraph 12, I have filed ULS' Response to Applications of Northrop Grumman Corporation's In-House Counsel for Access to Information Under Protective Order via the Court's electronic case filing system, which automatically serves the document on all parties.

Dated: May 31, 2019

Respectfully submitted,

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